



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Secretary of Natural Resources

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Director
(804) 698-4000

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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
STACYBILT HOMES, LLC
FOR
THORBURN ESTATES
UNPERMITTED ACTIVITY**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Stacybilt Homes, LLC, regarding Thorburn Estates, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Discharge" means, when used without qualification, a discharge of a pollutant, or any addition of a pollutant or combination of pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
5. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
6. "Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil, or rock.
7. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
8. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
14. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause

- pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
15. "Property" or "Parcel" means the tract of land south of Chancellor Road near the intersection of Chancellor Road and Gordon Road, in Spotsylvania County, Virginia, owned by Stacybilt Homes, LLC.
 16. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
 17. "Stacybilt" means Stacybilt Homes, LLC, a limited liability corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Stacybilt Homes, LLC is a "person" within the meaning of Va. Code § 62.1-44.3].
 18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
 19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
 20. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
 21. "Thorburn Estates" or "Thorburn" refers to the "Property," as defined above.
 22. "Va. Code" means the Code of Virginia (1950), as amended.
 23. "VAC" means the Virginia Administrative Code.
 24. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Stacybilt owns the Property in Spotsylvania County, Virginia; the location of a proposed private residential housing community.

2. On October 23, 2017, DEQ received a Joint Permit Application (JPA) from Stacybilt for authorization to impact surface waters. A revised application was received by DEQ on February 27, 2018.
3. On August 17, 2018, DEQ received the JPA fee, and the application package was deemed complete. This established September 30, 2018 as the 45-day deadline for authorization or denial of permit coverage.
4. On September 20, 2018, Department staff inspected the Property for compliance with the requirements of the State Water Control Law and the Regulations. The DEQ inspector observed excavated and/or filled surface waters associated with an unnamed tributary to the Ni River, located in the Mattaponi River Basin. An estimated 0.25 acre of surface water had been impacted, which included 0.25 acre of palustrine forested wetland and 10 linear feet of stream channel. The impacted locations correspond to the proposed impact locations labeled "A", "B", and "M" in the revised JPA.
5. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit excavating or filling of surface waters without a Permit issued by the Director. Stacybilt does not have a Permit for the discharge of fill material into surface waters as no Virginia Water Protection Permit has been issued by DEQ for this construction project.
6. On September 20, 2018, DEQ issued NOV No. 1809-000870 to Stacybilt for the unauthorized activity observed during the inspection conducted on September 20, 2018, in violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
7. On October 22, 2018, Department staff met with representatives of Stacybilt to discuss the violations. Stacybilt acknowledged the cited wetland and stream impacts, verified the locations and quantities of impacts estimated by DEQ to be accurate, and stated that Stacybilt had immediately ceased impacting state waters upon receipt of the NOV.
8. During the meeting on October 22, 2018, Stacybilt stated that the violations were inadvertent because Stacybilt thought it possessed the required permit authorization when construction was initiated. Stacybilt explained that it thought that DEQ had approved VWP Permit coverage for the project when Stacybilt received a Virginia Stormwater Management Program (VSMP) Permit for the site.
9. Email correspondence from Stacybilt's consultant on November 6, 2018 and January 2, 2019 showed that Stacybilt had not yet been issued a VSMP Permit for Thorburn Estates, however, a completed VSMP Permit application package and executed registration form was on file with Spotsylvania County. Issuance of the VSMP Permit was pending coordination and administrative processing between the County and DEQ Central Office.
10. During the meeting on October 22, 2018, Stacybilt indicated that construction notification and monitoring reports would be submitted in accordance with VWP Permit conditions, in order to initiate the process of returning to compliance. Accordingly, on October 23, 2018, DEQ received a "Post-Construction Commencement Notice," and on

December 7, 2018, DEQ received a "VWP Permit Construction Status Update Form." The documents were submitted to DEQ via email from Stacybilt's consultant.

11. The unpermitted excavating and/or filling of state surface waters is a violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
12. Based on the results of the inspection performed on September 20, 2018, the meeting on October 22, 2018, and the subsequent email correspondence between DEQ, Stacybilt, and Stacybilt's consultant, the Board concludes that Stacybilt has violated 9VAC25-210-50 and Virginia State Water Control Law § 62.1-44.15:20, as described in paragraphs C(1) through C(11), above.
13. In order for Stacybilt to return to compliance, DEQ staff and representatives of Stacybilt have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Stacybilt, and Stacybilt agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$12,721.50** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Stacybilt shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Stacybilt shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Stacybilt for good cause shown by Stacybilt, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 1809-00870 dated September, 21 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Stacybilt admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Stacybilt consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Stacybilt declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Stacybilt to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Stacybilt shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Stacybilt shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Stacybilt shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Stacybilt. Nevertheless, Stacybilt agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Stacybilt has completed all of the requirements of the Order;
 - b. Stacybilt petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Stacybilt.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Stacybilt from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Stacybilt and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Stacybilt certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Stacybilt to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Stacybilt.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Stacybilt voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 31st day of May, 2019.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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Stacybilt Homes, LLC voluntarily agrees to the issuance of this Order.

Date: 3/26/19 By: [Signature], Manager
(Person) (Title)
Stacybilt Homes, LLC

Commonwealth of Virginia
City/County of Stafford

The foregoing document was signed and acknowledged before me this 26 day of
March, 2019, by Jerry Brown who is
Owner of Stacybilt Homes, LLC, on behalf of the company.

[Signature]

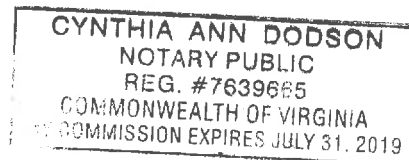
Notary Public

7639665

Registration No.

My commission expires: July 31, 2019

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Stacybilt Homes, LLC shall:

1. Not later than 60 days after execution of this Order, submit proof of purchase of 0.50 wetland credit for 0.25 acre of unpermitted impacts to palustrine forested wetland, and 15 stream credits for 10 linear feet of unpermitted stream impacts from a DEQ-approved mitigation bank that is authorized and approved by DEQ to sell credits in the area in which the impacts occurred and has credits available (as released by DEQ) to achieve no-net-loss of existing wetland acreage and no-net-loss of function in all surface waters in accordance with 9 VAC 25-210-116.
2. Not resume any impacts to state waters unless authorization from DEQ is granted via a Permit.
3. Unless otherwise specified in this Order, Stacybilt shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193